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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

HECTOR ORLANDO ANGULO,

Defendant and Appellant.

E064272

(Super.Ct.No. RIF1405007)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.
Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Hector Orlando Angulo appeals after he pleaded guilty to one felony count of heroin possession. (Health & Saf. Code, § 11350, subd. (a).)

Defendant was sentenced to a second-strike term of 32 months in state prison, based on a

prior strike conviction for attempted murder. (Pen. Code, §§ 187, 664.) Defendant filed a request for resentencing, to have his current drug offense reduced to a misdemeanor. The trial court denied the request, and defendant appealed. We affirm.

FACTS AND PROCEDURAL HISTORY

On or about November 5, 2014, the Riverside County District Attorney filed a felony complaint against defendant, alleging one count of felony possession of heroin, and one count of misdemeanor possession of drug paraphernalia. The complaint further alleged that defendant had a prior conviction in 2006 for attempted possession of a controlled substance, for which he had served a prior prison term. The complaint also asserted that defendant had suffered a prior strike conviction in 1978 for attempted murder.

At the arraignment stage, defendant entered into a plea bargain. He agreed to plead guilty to the felony possession of heroin, and to admit the strike; in exchange, the paraphernalia charge and the prison term prior would be dismissed. Defendant duly entered his plea and requested immediate sentencing. The court found that defendant was disqualified from serving his term in the county jail because of his prior attempted murder conviction. The court imposed the low term for possession of heroin, 16 months, and doubled that term to 32 months because of defendant's strike prior. The court also calculated defendant's presentence credits, and imposed a restitution fine of \$300, a parole revocation restitution fine of \$300, a court operations assessment fee of \$40, and a criminal conviction assessment fee of \$40.

In January 2015, defendant filed a form designated as a petition for resentencing. Defendant attached a handwritten document requesting resentencing under a new law, Proposition 47, “that overturns felony drug possessions down to misdemeanors.” Defendant asked the court to look into his eligibility for resentencing under the new law.

The trial court treated the matter as a petition under Penal Code section 1170.18 and, in May 2015, requested a response from the district attorney. The district attorney responded that defendant was not eligible for resentencing relief, because his strike prior—attempted murder—was a disqualifying “super strike.” The trial court issued an order in June 2015 denying the petition on the ground that defendant was ineligible because of his attempted murder prior conviction.

Defendant filed a timely notice of appeal, asserting that the appeal was based on matters occurring after the plea and not affecting the validity of the plea, i.e., the denial of defendant’s petition for resentencing. Defendant also raised as possible issues on appeal that he did not believe his appointed attorney had provided “valuable assistance” in the proceedings, and that he felt the search leading to the discovery of the drugs and paraphernalia was unlawful. Defendant did not seek a certificate of probable cause.

ANALYSIS

Upon defendant’s appeal and at his request, we have appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the trial court erred in

denying his petition for resentencing. Counsel has also requested this court undertake a review of the entire record.

Defendant has been offered an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted a review of the entire record and find no arguable issues. The Safe Neighborhoods and Schools Act (Proposition 47), passed by the electorate in November 2014, added section 1170.18 to the Penal Code. Proposition 47 reduced certain nonviolent drug and theft offenses from straight felonies or wobblers to misdemeanors. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) Penal Code section 1170.18 provides a mechanism for those sentenced to such nonviolent drug and theft offenses before the effective date of the act to petition for resentencing. Inmates given felony sentences for nonviolent drug and theft offenses may nevertheless be ineligible for resentencing if they have suffered certain specified prior offenses, referred to as “super strikes.” (See Pen. Code, §§ 1170.18, subd. (i); 667, subd. (e)(2)(C)(iv).) Among the disqualifying super strikes is, “Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.” (Pen. Code, § 667, subd. (e)(2)(C)(iv)(IV).) Defendant has a prior conviction for attempted murder as defined in Penal Code sections 187 and 664.

DISPOSITION

We find no arguable issues. The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.